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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
RYAN OLSEN,  
  
Defendant and Appellant.

2d Crim. No. B234558  
(Super. Ct. No. 1346288)  
(Santa Barbara County)

Ryan Olsen appeals his conviction by jury of two counts of lewd acts on a child by force (counts 1 & 4; Pen. Code, § 288, subd. (b)(1)),<sup>1</sup> aggravated sexual assault of a child by oral copulation (count 2; § 269, subd. (a)(4)), two counts of oral copulation of a child under the age of 14 by a person more than 10 years older than the victim (counts 3 & 7; § 228a, subd. (c)(1)), lewd act on a child under the age of 14 (count 5; § 288, subd. (a)), and anal and genital penetration by foreign object of a child under the age of 14 by a person more than 10 years older than the victim (count 6; § 289, subd. (j)). The trial court sentenced appellant to 57 years to life state prison. Appellant argues there is insufficient evidence of force to support the convictions for aggravated sexual assault (count 2) and lewd act by force (counts 1 & 4). We affirm.

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<sup>1</sup> All statutory references are to the Penal Code.

### *Facts*

Appellant was a trusted friend of T.K. and often babysat her children while T.K. was at work. Appellant had a daughter the same age as T.K.'s youngest child, Jane Doe 1 (Jane). Between 2001 and 2003, T.K. sent seven-year-old Jane and her siblings to appellant's home every other week for overnight visits. T.K. told Jane to listen to "Uncle Ryan" and do what he said because he was the adult in charge.

In 2009, Jane reported that appellant had molested her and that it happened almost every time she went to appellant's home. In a taped interview, appellant told Santa Maria Police Detective Paul Van Meel that he touched and licked Jane's vagina when she was 9 or 10 years old. Appellant said there were less than 10 incidents.

#### *Count 1: Lewd Act With Force (§ 288, subd. (b)(1))*

At trial, Jane testified that appellant ("Uncle Ryan") molested her every weekend she went to his house. Count 1 occurred when she was seven years old. Appellant took her to his bedroom and removed her clothes and his own clothes. Laying on his back, appellant positioned Jane on his belly so that she was facing him and her vagina touched his penis. Appellant put his hands on her back and legs and said, "It's okay. I'm not going to hurt you" Jane was very, very scared.

Appellant rubbed his penis against Jane's vagina for 10 to 20 minutes. At one point, his daughter walked in. Appellant told the daughter to go away and told Jane not to tell anyone, "this will be our secret." Jane "squiggled" off after appellant kissed her on the forehead and dozed off.

#### *Count 2: Oral Copulation By Force (§ 269, subd. (a)(4))*

In a second incident, Jane spilled soda on her shirt and took a shower. Appellant opened and closed the bathroom door, took his clothes off, and sat on the toilet. Jane was "really scared." After Jane got out of the shower, appellant lifted her up over his head and licked her vagina. Jane felt his tongue penetrate her vagina.

Appellant put her down and asked, "Do you want to lick my penis?" Jane said "No," put her clothes on and left the bathroom. Jane told no one about the incident because she "didn't want it to happen again" and thought no one would believe her.

*Count 4: Lewd Act With Force (§ 288, subd. (b)(1))*

When Jane was eight, appellant asked "Do you want to come sleep with me?" Jane Doe responded "No." Appellant said he had cookies in the bedroom which Jane loved. After Jane entered the bedroom, appellant closed and locked the door, and removed Jane's clothes and his own clothes. Appellant sat on the edge of the bed, put his hands on Jane's stomach, and held her on his lap facing away from him. Jane felt his penis touch her butt a couple of times and was really scared.

At trial, appellant claimed that Jane initiated the sexual contact, asked him to lick her private part, and threatened to tell her parents and teachers. Appellant feared that he would lose custody of his daughter if he did not comply and so he licked Jane's vagina four or five times.

*Substantial Evidence: Force*

Appellant argues that the conviction for forcible lewd acts (count 1 and 4) and aggravated sexual assault (count 2) must be reversed absent evidence that he used force or duress to commit the sexual acts. (§§ 288, subd. (b)(1); 269, subd. (a)(4).) Because the terms "force" and "duress" are in the disjunctive, the prosecution need only show that force or duress was used to accomplish the sexual act.<sup>2</sup> (See *People v. Hale* (2012) 204 Cal.App.4th 961, 976; *People v. Soto* (2011) 51 Cal.4th 229, 236 [juror unanimity on use of force or duress not required, as long as all 12 jurors agree that force or duress was utilized]; *People v. Bergschneider* (1989) 211 Cal.App.3d 144, 155, fn .10 [same].) On appeal, we review the record in the light most favorable to the judgment and presume the existence of every fact the jury could reasonably deduce from the evidence in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Unless the

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<sup>2</sup> The jury was instructed that in order to convict for oral copulation by force, the prosecution had to prove: "The defendant accomplished the act by force, violence duress, or fear of immediate and unlawful bodily injury to someone." (CALCRIM 1015.) To convict for lewd act by force, the jury was instructed that the prosecution had to prove "defendant used force, violence duress, or fear of immediate and unlawful bodily injury to someone else." (CALCRIM 1111.)

testimony is physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Appellant argues there were no threats and no force or violence. Our courts have held that acts of grabbing, holding, and restraining the victim in conjunction with the lewd act constitutes force. (*People v. Alvarez* (2009) 178 Cal.App.4th 999, 10065) On count 1, appellant took Jane to his bedroom, lifted her up, and put her on top of his belly so that his penis touched her vagina. He kept his hands on her back and legs so that she could not get away. In count 2, appellant lifted Jane up above his head and orally copulated her in the bathroom. Suspended in air, she could not get away. In count 4, appellant lured Jane to his bedroom with cookies, closed and locked the door, and held her on his lap with his hands on her stomach so that his penis touched her thigh and butt.

On each count, appellant picked Jane up and manipulated her nude body. The physical force was similar to *People v. Cicero, supra*, 157 Cal.App.3d 465, in which the defendant picked two young girls up and closed his hands on the girl's crotches while carrying them under his arm. (*Id.*, at p. 470.) "[A] separate lewd act by force was accomplished on each girl as defendant carried them along." (*Id.*, at p. 486.)

#### *Duress*

Appellant argues that he not did use physical force substantially different from or in excess of that necessary to accomplish the sex acts. Citing *People v. Schulz* (1992) 2 Cal.App.4th 999, 1004, he argues that lewd touching often involves some physical contact and a modicum of holding and even restraining cannot be regarded as excessive "force." But the court in *Schulz* acknowledged that "[p]hysical control can create 'duress' without constituting 'force.' 'Duress' would be redundant in the cited

statutes if its meaning were no different than 'force,' 'violence,' 'menace,' or 'fear of immediate and unlawful bodily injury.' [Citation.]" (*Id.*, at p. 1005.)<sup>3</sup>

Here the prosecution told the jury that "duress is really the strongest theory, and duress means a direct or implied threat of force, violence, danger of hardship or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something she would not otherwise do or submit to." It was a correct statement of the law. (*People v. Leal* (2004) 33 Cal.4th 999, 1004. ) Duress involves psychological coercion. (*People v. Superior Court (Kneip)* (1990) 219 Cal.App.3d 235, 238.)

"Physical control can create 'duress' without constituting 'force.'

(*People v. Senior* (1992) 3 Cal.App.4th 765, 775.) The jury was instructed "[w]hen deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and her relationship to the defendant." (CALCRIM 1115, 1111.)

Duress was established. Jane was a little girl, weighed 50 to 60 pounds and was three feet, six inches tall. Appellant was substantially larger (6' 1") and heavier (340 pounds). As an impressionable seven year old, Jane was easily coerced based on appellant's age, size, frequent contact with the family, and position of authority. Our courts have held that a large age discrepancy between the defendant and the child victim is enough. (See *People v Pitmon*, *supra*, 170 Cal.App.3d at p. 51 [eight-year-old victim]; *People v. Cochran* (2002) 103 Cal.App.4th 8, 15 [nine-year-old]; *People v. Veale* (2008) 160 Cal.App.4th 40, 49-50 [seven-year-old].)

Duress was also manifested by appellant's use of an isolated place to commit the sex acts (the bedroom or bathroom with the door closed) which came with the

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<sup>3</sup> "There is some overlap between what constitutes duress and what constitutes force. This is because duress is often associated with the use of physical force, which may, but need not be present to have duress. . . [F]orce, as used in the content of section 288, subdivision (b), refers only to physical force. To extend the meaning of that word to cover psychological coercion would be tantamount to rendering the word 'duress' meaningless in that statute." (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 50, fn. 9.)

warning that it is "our secret" and not to tell anyone. (*People v. Superior Court (Kneip)*, *supra*, 219 Cal.App.3d at pp. 238-239; (*People v. Senior*, *supra*, 3 Cal.App.4th at p. 775.) A rational trier of fact can find duress where there is an "inherent imbalance of power in an encounter between a child and an adult bent on sexual conduct." (*People v. Soto* (2011) 51 Cal.4th 229, 245-246.) Jane was scared and feared retaliation.

The evidence clearly shows that appellant used force and/or duress to commit the lewd acts and aggravated sexual assault. " 'This record paints a picture of a small, vulnerable and isolated child who engaged in sex acts only in response to [appellant's frequent contact with the family] and physical authority. Her compliance was derived from intimidating and the psychological control he exercised over her and was not the result of freely given consent.' [Citation.]" (*People v. Veale*, *supra*, 160 Cal.App.4th at p. 48.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Edward H. Bullard, Judge  
Superior Court County of Los Angeles

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